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VIA ECFS
Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Communications in CS Docket 97-80

Dear Ms. Dortch:

In response to the September 30, October 19, November 2, and November 15, 2004 *ex parte* filings of the National Cable and Telecommunications Association ("NCTA") and its members, and the November 4 filing by cable industry set-top-box and CableCARD vendor Motorola, the Consumer Electronics Association ("CEA"), on behalf of our members ("CE"), hereby files this response.

Fundamentally, there is no validity to the cable industry's assertion that the basis for the Commission's requirement of common reliance on a security interface, by a date certain, has been undermined or displaced by the Commission's adoption of its Plug & Play rules. The Plug & Play rules create necessary, but not sufficient conditions for attachment of retail CableCARD enabled devices to cable systems. Cable operator reliance on CableCARDs is the second, equally necessary step to ensure that retail devices can compete.

It seems fair to say that if the Commission had not moved its original "reliance date" of January 1, 2005 back to July 1, 2006, the CableCARD interoperability issues now being diligently addressed by both industries would be unlikely to have arisen. If CableCARDs were to be integral to new MSO-provided products, their design, firmware, software, and headend support would likely by now have been thoroughly proven and field-tested by cable operators. Moreover, if the Commission had chosen an earlier date, such as the 2003 date mentioned in its Reconsideration R&O in this Docket (or the 2001 date urged by the CE industry), the acquisition costs of CableCARDs would by now have plummeted because of economies of scale.

As digital cable ready products come to market, first primarily as televisions and then as DVRs and other popular items, the DTV transition cannot bear the risk that their security interface will be deemed unusual, unreliable, or poorly supported, and that its acquisition costs will be much higher than they need be. ONLY common reliance can provide a

marketplace assurance that support and reliability will be maximal, and acquisition cost will be minimal.

Specifically, the cable industry has made several assertions that lack relevance or do not bear scrutiny in its *ex parte* filings:

1. ***Cable assertion:*** The cable industry has made a firm commitment to facilitate new retail distribution channels and to support the CableCARD-enabled devices, as exemplified by its implementation of the 2002 MSO-CE Manufacturer Agreement on "Plug and Play" DTV products.

   CE response: Despite the diligence of both industries, problems are being experienced in the field almost five months after the regulatory requirement to "support" the operation of CableCARD-reliant devices. Some of these problems are still attributable to CableCARD and head end hardware and software problems. This illustrates the difference between a "do it by a date" mandate and a market-based mandate. The cable industry's good faith efforts have had to run counter to their own market imperatives because they need not rely on the technology that has been mandated for the benefit of others. This has meant: (1) design and field certification and testing on the cable side cannot enjoy the same priority as it does in the case of operator-provided devices, and (2) per-unit cost has not enjoyed *any* learning or production curve advantages since the CableCARD technology was first developed in 1998. Even with all the good faith in the world, a first-generation, low-volume electronics product will still cost several times more than a later generation, high-volume product.

2. ***Cable assertion***: The FCC rules implementing the MSO-CE Agreement required digital cable systems to support CableCARD enabled devices, obviating the need for the costly integration ban which arguably served that purpose.

   CE response: A mandate to "support" a competitive product is not sufficient without a matching marketplace incentive. The "Plug & Play" negotiations, in either of their phases, were never intended to, and did not, obviate the purposes of the FCC regulation in question. The basic problem of an implement designed by the cable industry for use by its device competitors, but not for its own use, was never meant to be addressed in these negotiations and has not been addressed.

3. ***Cable assertion:*** A ban on integrated set-top boxes would substantially increase equipment costs (and monthly leased prices) and reduce equipment options for consumers.

   CE response: As was demonstrated last year in the March 4, 2003 expert Declarations by Jack W. Chaney and by Colas Overkott of card manufacturer SCM, and on November 17 of this year in the *ex parte* filing of Intel, CableCARD costs could have and should have by now been a fraction of the figures that were first projected by Motorola and Scientific Atlanta in 1998 and are still relied upon by NCTA today. Intel, which obviously has a

great deal of experience in mass producing silicon products and incorporating software into such products, comments on these earlier Declarations: "Intel affirms the general conclusions of those two experts that in quantity CableCARDs initially should cost between $19 and $15. Given Intel's experience in mass production, we believe prices will fall even further once July 1, 2006 is behind us, *provided that the reliance date is not delayed again*." (emphasis added)

The regulation now under challenge has never had any real world effect on CableCARD acquisition costs because the 18-month product acquisition cycle has never been approached. If the regulation is left in force, this cycle will finally be entered this January. Moreover, without this regulation in place, cable's vendors are given carte-blanche to charge cable operators a premium for CableCARDs because it is in their financial interest to do so. Cable operators also have the flexibility to charge proportionately more for the use and installation of CableCARDs, which they generally have sought to discourage. When cable operators and competitive entrants all rely on common security devices, all parties will be motivated to make that security as efficient and economical as possible.

4. ***Cable assertion:*** If the FCC's rule were to remain in place, it could impede continuing MSO-CE discussions regarding standards for two-way products.

   CE response: In 2003, the FCC moved the original "reliance date" from January 1, 2005 to July 1, 2006. At the time, the FCC appeared to accommodate cable's arguments to wait for the "next milestone" (i.e., multistream CableCARDs) to justify modifying the reliance dates. That milestone was met with the publication of the specification for multistream CableCARDs.

   The negotiations seeking a framework for competitive interactive devices are not stymied by debates over separable security. They are complex in their own right because they address issues that were not encountered during the "Phase I" process. From the CE perspective, the work on a competitive interactive framework would gain a new level of certainty, and the negotiations would gain impetus, with the present FCC rule on security left in place.

5. ***Cable assertion:*** The Integration Ban may stymie the development of a low-cost digital set-top box and a prompt digital transition.

   CE response: Even Comcast, in its November 15 filing, recognizes that hardwired physically integrated security is *not* the answer to providing a low-cost device to serve legacy products. Rather, Comcast discusses a future solution (that one hopes would be viable for competitive products as well) based on downloadable security. The future under discussion, however, appears to be generations ahead of equipment available today

or in 2006.[1] No reason is given to change the existing July 1, 2006 date to accommodate any such products. Nor would any such change lower costs to consumers, in 2006 or thereafter.

A major obstacle to establishing the competitive market envisioned by the Congress in 1996 has been that competitive entrants are shooting at a "moving target." In 1998, the Commission gave the cable industry *seven years* in which to allow competitive entrants to catch up in the area of a common security interface, by giving cable operators that long to use the same one as competitors. In 2003 the FCC extended this to 8.5 years. Now that competitive products are finally entering the market, now is not the time to pull the rug out from under this core area of commonality.

When a common security interface prevails in the marketplace, and a framework for "interactive" competitive products has finally been achieved, the Commission will finally be close to having achieved one of the Congress's essential goals – competition from a range of independently offered products, such as DVRs, DVD players, game players, PCs, etc., that can work directly on digital cable. The ability of these players to sport a common security interface, and to service legacy analog TVs at the same time, will more than make up for any residual cost saving by hardwiring proprietary, non-renewable security into navigation devices.

Please do not hesitate to contact me at 703.907.7644 should you have any questions.

Respectfully submitted,

/s/
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[1] Indeed, Comcast in the same filing -- when addressing "Must Carry" issues -- predicts a "simulcasting" environment over the next several years in which analog transmissions to the home will persist – an indication that digital converters for legacy products will not be needed in the near term.